

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
STRAUSS, et al. : 06-CV-702 (mdg)
Plaintiff, :
 :
- versus - : U.S. Courthouse
 : Brooklyn, New York
CREDIT LYONNAIS, :
Defendant : December 7, 2009
-----X

-----X
WOLF, et al., : 07-CV-914 (mdg)
Plaintiff, :
 :
- versus - :
 :
CREDIT LYONNAIS, :
-----X

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

For the Plaintiffs:

Strauss and Weiss:

**Joshua Glatter, Esq.
Gary Osen, Esq.**

Wolf and Applebaum:

Joel Israel, Esq.

For the Defendant

Credit Lyonnais & NatWest: Lawrence Freidman, Esq.

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1 THE CLERK: Weiss v. National Westminster Bank,
2 docket number 05-CV-4622 and Applebaum v. Nat West Bank,
3 docket number 07-CV-916, two cases against Credit
4 Lyonnais, Strauss v. Credit Lyonnais, docket number
5 06-CV-702 and Wolf v. Credit Lyonnais, 07-CV-914.

6 Will counsel appearing please state their names
7 for the record so their voices can be identified. For
8 the plaintiffs in the Weiss and Strauss cases?

9 MR. GLATTER: Yes, good afternoon, your Honor.
10 This is Joshua Glatter from Osen, LLC on behalf of the
11 Strauss and Weiss plaintiffs. I am joined on this call
12 here in New Jersey by my colleagues Gary Osen, Naomi
13 Weinberg, and Aaron Schlanger.

14 Your Honor, one initial question, my
15 recollection which is imperfect is that this conference
16 was convened only in the Credit Lyonnais matter on behalf
17 of Strauss. Am I mistaken about that? Was that
18 (inaudible)?

19 THE COURT: You're not mistaken but as I see,
20 the new scheduling order we need to discuss concerns all
21 four cases. Am I catching anybody by surprise here? Are
22 you not prepared?

23 MALE VOICE: We'll find out, your Honor.

24 MR. GLATTER: We'll know when we get there,
25 your Honor, but certainly we can, you know, as always

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1 prepare to discuss it.

2 THE COURT: Okay. Yes and we can also give you
3 more time if you need it. I apologize but with the
4 change in the Judge handling all of this case, I went
5 through all of the docket sheets and prematurely
6 scheduled the conference only in the Strauss and Wolf
7 cases but I do want to discuss all four cases if the
8 parties are prepared to do so.

9 And counsel for the plaintiffs in the Wolf and
10 Applebaum cases?

11 MR. ISRAEL: Yes, good afternoon, your Honor.
12 This is Joel Israel from Sayles Werbner and I represent
13 the plaintiffs in both cases.

14 THE COURT: Okay. And for the defendants in
15 all four cases?

16 MR. FRIEDMAN: Good afternoon, your Honor.
17 It's Lawrence Friedman and I am with my colleague, Emily
18 Piccone, Cleary Gottlieb Steen & Hamilton.

19 THE COURT: Okay. It took a while for the
20 assignments to settle out but as you know,
21 Judge Trager will be the district judge handling all of
22 these cases. And in preparation for my briefing of
23 Judge Trager, I did take a closer look at both the
24 scheduling order and the docket sheets generally in these
25 cases.

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1 So we can first discuss the proposed scheduling
2 order and I have no problems with the proposed dates for
3 the expert reports but I am just wondering if there is a
4 -- if we should talk about the dispositive motions that
5 you are planning to file and whether -- what kind of
6 Daubert motions you think will be filed by either side, I
7 guess.

8 MR. FRIEDMAN: Well, your Honor, we're
9 exchanging the first -- this is Larry Friedman. We're
10 exchanging the first round of expert reports this
11 Thursday.

12 THE COURT: Right.

13 MR. FRIEDMAN: So it's hard to say what kind of
14 Daubert motions there will be but we wanted to flag that
15 in the schedule. And with respect to dispositive motions
16 based on what both defendants have seen so far, they
17 intend to move for summary judgment but that's pending
18 what we see in the expert reports.

19 Just so your Honor knows, the fact discovery in
20 the Credit Lyonnais cases is virtually complete. We have
21 two remaining depositions in Paris this week and next.
22 And there are a few more documents that the -- we owe the
23 plaintiffs but I think it's fair to say that it's
24 virtually complete.

25 The NatWest cases are farther behind, just by

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1 virtue of the original schedule which contemplated that
2 NatWest generally would be about six or seven months
3 behind and our document production has slowed that up and
4 we proposed to plaintiffs a revised scheduling order in
5 the NatWest cases in September and we're waiting to get a
6 response from them.

7 But again focusing on the Credit Lyonnais
8 cases, it's hard to say what kind of Daubert motions you
9 would see from Credit Lyonnais until we see plaintiff's
10 expert reports and the dispositive motion I anticipate
11 will be a summary judgment motion at the close of expert
12 discovery.

13 MR. GLATTER: Your Honor, Josh Glatter on
14 behalf of the Strauss plaintiffs.

15 Just in response, I concur with Mr. Friedman
16 with respect to expert reports in the sense of knowing on
17 our end what sort of Daubert or Cumo Tire (sic) motion we
18 might file is a little bit difficult to determine until
19 we've had an opportunity to review the reports and depose
20 the witnesses and assess what, if anything, is
21 appropriate on that score.

22 I do want to point out with respect to the --
23 where fact discovery stands independent of expert reports
24 and depositions, Mr. Friedman is generally correct that
25 as what's on the table now is largely complete with two

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1 depositions scheduled to proceed through Hague Convention
2 channels in Paris beginning later this week.

3 However, and this is probably something your
4 Honor took note of in looking at the proposed scheduling
5 order in Credit Lyonnais, you'll note that there's an
6 August 31, 2000 deadline -- date rather for deadline for
7 completion of all fact discovery.

8 THE COURT: Yes, yes.

9 MR. GLATTER: And that then has a number of
10 sort of carve-outs from that date and a number of them
11 are still items that we do need to be following-up with
12 defendants on from a logistics stand point to see where
13 things are because I think we still are not clear on
14 whether we've reached a sort of point of conclusion yet.

15 I can walk you through them specifically if you
16 would like, Judge.

17 THE COURT: I would actually.

18 MR. GLATTER: That's fine. With respect to --
19 and obviously I will walk it through and Mr. Friedman may
20 have his own response and comments, so if I can just walk
21 him through and then I will await Mr. Friedman's
22 comments.

23 First, the deadline contemplates responses and
24 related production to letters of request under the Hague
25 Convention. That references the two depositions that I

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1 referred to that are scheduled to kick off in Paris; one
2 is for Mr. Odren (ph.) and the other one for Mr. Sole
3 (ph.), who were former employees of the bank.

4 The second item, item B, are documents that the
5 defendant is producing pursuant to the Court's order of
6 April 24, 2009 and that reflected the one month sort of
7 test for November 2000 statements for all incoming
8 transfers. We took a look into the correspondence
9 between the parties today. The production of that
10 material had still been rolling and I believe the last
11 correspondence we got on that point was in early October
12 from defendant's counsel that said that they had -- there
13 was still some -- Aaron what was the phrasing -- some
14 external archived material that they were still reviewing
15 and would be producing on a rolling basis. So I am not
16 sure where things stand.

17 THE COURT: Okay. Let me just interrupt at
18 this point because I was lulled into thinking that that
19 one month test of -- documents from that one month period
20 for the parties to figure out the limits or whether or
21 not any limits ought to be placed or, you know, a
22 monetary threshold ought to be placed on the documents
23 had already been resolved. So you haven't even gotten to
24 that point?

25 MR. FRIEDMAN: We have, your Honor, I think

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1 Mr. Glatter omitted a more recent development. It took
2 several months for the bank to collect from external
3 archives, the one test month and I think it was four or
4 five months and we still didn't get them all.

5 So on the third week of October, I had a meet
6 and confer telephone call with Mr. Goldman and
7 Mr. Schlanger and we exchanged some emails and I hoped to
8 send to them tomorrow a letter reporting on where we
9 stand on the non-binding agreement that we reached as to
10 what we would focus on for the rest of the months because
11 it became clear that it would -- and I am not
12 exaggerating, it would literally take years if we applied
13 the same no threshold approach to the full year that we
14 did to that one test month.

15 So Mr. Goldman told me what he would like us to
16 focus on in looking at the rest of the year and I -- as I
17 said, I expect to give him a report on that tomorrow and
18 the agreement that we had from that meet and confer is
19 non-binding, so if there's more that he wants, he will
20 let me know. But it really is quite an exhaustive
21 exercise and it does take a very substantial amount of
22 time.

23 I think when Mr. Goldman and I spoke about this
24 towards the end of October, I got a very good sense from
25 him as to what he wants to focus on and I think what I am

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1 going to deliver to him tomorrow will comply with that.

2 But again, if he wants more, he'll come back to me.

3 MR. GLATTER: Mr. Friedman stole my thunder a
4 little bit. I was actually getting to the point that
5 independent of the technical issue of whether all
6 documents have been produced for that November month,
7 that there had been a series of meet and confers between
8 counsel in terms of trying to them scope out what a
9 broader production might look like since the November
10 test month was designed to help focus the parties minds
11 on how to put some reasonable parameters around it.

12 The next item -- unless does your Honor have
13 any other further questions on that point?

14 THE COURT: Yes, okay. All right. All right.
15 So I guess it's -- we won't spend any more time talking
16 about that but that is potentially an open issue then.

17 MR. FRIEDMAN: That's right.

18 THE COURT: Okay.

19 MR. GLATTER: Potentially, yes, Judge.

20 THE COURT: All right.

21 MR. GLATTER: There's a reference in that
22 August 31, 2000 deadline to a deposition of Memory which
23 is a third party, that plaintiffs initially issued a
24 subpoena to which defendants have issued a counter cross-
25 subpoena. My understanding, and Larry, I don't know

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1 where things stand on it, is that Memory's counsel is
2 still having some discussions with Mr. Friedman regarding
3 the scope of Credit Lyonnais' subpoena to that entity.
4 So I think that still has to get hammered out on that end
5 with respect to the topics they've identified.

6 MR. FRIEDMAN: Yes, I think that will be
7 resolved very shortly.

8 MR. GLATTER: Right.

9 THE COURT: And so what's --

10 MR. FRIEDMAN: And then the deposition --

11 THE COURT: -- you're contemplated deposition.

12 MR. FRIEDMAN: Yes, the deposition can be
13 taken. I am hoping to negotiate something with Memory's
14 counsel which will moot my cross subpoena to which he
15 objected and then plaintiff's deposition can go forward.

16 THE COURT: Where was the subpoena issued?

17 MR. FRIEDMAN: The subpoena -- well that's an
18 interesting point, your Honor. The subpoena was issued
19 out of Washington, D.C., along with -- actually the
20 plaintiff's subpoena might have been issued out of this
21 court improperly but Memory didn't object to it because
22 they're based in Washington.

23 Then when it came time for me to cross
24 subpoena, I had to do it out of Washington. And if
25 there's to be motion practice, Memory is insisting that

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1 the motion practice be in the Washington, D.C. court.

2 So I think as a technical matter because Memory
3 is not located in the eastern district or the southern
4 district --

5 THE COURT: No, I know that. I am acutely
6 aware of the problems --

7 MR. FRIEDMAN: But in any event, your Honor --

8 THE COURT: -- that arise.

9 MR. FRIEDMAN: -- I'm hoping we will not need
10 to darken your doorstep with this because I am hoping
11 that we can negotiate the scope of my cross subpoena so
12 that that deposition can go forward. And it should be a
13 very quick deposition.

14 THE COURT: Okay.

15 MR. GLATTER: I actually think our subpoena
16 also emanated out of D.C. I think that -- but I think
17 Mr. Friedman's correct that there had been some dispute
18 with the deponent as to where litigating its enforcement,
19 if that became necessary, was. But in any event, let me
20 just continue ticking off the items in that -- on the
21 August 31 carve out.

22 THE COURT: Okay.

23 MR. GLATTER: With the plaintiff's production
24 of his additional Israeli court records, my understanding
25 is on our end that that's been completed. Items 3,

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1 plaintiff's proposed production to Credit Lyonnais and
2 NatWest of documents that Arab Bank produced is actually
3 not applicable by virtue of a resolution that was
4 independently worked out between the litigants in both
5 cases.

6 THE COURT: Right, I recall that.

7 MR. GLATTER: Okay.

8 THE COURT: That was a subject of one of our
9 conferences before.

10 MR. GLATTER: With respect to item 4, any
11 depositions that may be scheduled pursuant to the parties
12 letter agreement dated June 29, 2009, we had a series of
13 meet and confers with Mr. Friedman and his colleagues,
14 really working off the Rule 26(a)(1) disclosures to try
15 to give, to the extent that we can, a preview of where --
16 you know, who is likely to be called so that defendants
17 could have some idea of who they may want to depose.

18 One of the things that came up in that
19 discussion which I guess is obvious, is that we had not
20 yet reached a point, nor really could we, that we would
21 make a formal 26(a)(3) trial witness disclosure and I
22 suppose certainly from Mr. Friedman's end, once
23 ultimately we reach resolution as to who the list will be
24 from a trial witness stand point, there may be certain
25 individuals that he will want to depose and I think we

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1 have an agreement in principle between the parties to
2 meet and confer on that point once we have reached a
3 little bit better clarity in that regard and to the
4 extent that the schedule needs to be adjusted mildly to
5 accommodate that, I am sure we'll be able to work that
6 out.

7 But we've done the best that we can based on
8 the disclosures to date to try to at least corral the
9 universe of potential people that would fall within that
10 scope.

11 THE COURT: Okay.

12 MR. FRIEDMAN: Your Honor, if I may, it's
13 actually as I know, Josh will agree, it's a little firmer
14 than that. There were a couple of categories of dozens
15 of people who were listed in their disclosures. We
16 reached an agreement, memorialized in the letter that's
17 referenced that if any of those people is identified as a
18 trial witness, we will have the opportunity to depose
19 them, so that we did not waste everybody's time and money
20 with deposing people who would not be trial witnesses.

21 MR. GLATTER: That's right.

22 MR. FRIEDMAN: And that's what the letter says.

23 MR. GLATTER: Yes.

24 THE COURT: I guess my concern would be if the
25 plaintiffs end up producing affidavits from any of these

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1 witnesses in opposition to your summary judgment motion
2 which I assume will likely be filed, absent Judge Trager
3 persuading you not to file the motions. But in any
4 event, is there a possibility, Mr. Glatter, that you
5 would be producing affidavits in opposition to any
6 summary judgment motion?

7 MR. GLATTER: I'm going to -- as a general
8 matter, I guess it's hard to say that with any degree of
9 definitiveness until I know exactly what grounds the
10 defendant intends to seek summary judgment. But on that
11 score, let me defer to my colleague, Mr. Osen, who may
12 have a more specific comment with respect to at least
13 that potentiality.

14 MR. OSEN: Yes, I think your Honor in general
15 what Mr. Glatter said is correct. And as Mr. Friedman
16 knows, most of the people on the Rule 26 disclosure which
17 was detailed in our exchange of correspondence are first
18 (inaudible) acknowledge concerning the actual attacks in
19 question, so that for the most part, it's obviously
20 subject to what could theoretically occur in the context
21 of summary judgment.

22 I wouldn't anticipate affidavits in that regard
23 since their knowledge primarily goes to the fact that
24 events occurred, rather than the more complex issues of
25 who was responsible and so on.

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1 THE COURT: Okay.

2 MR. OSEN: The only exception I could think of
3 which again at this stage is a little premature, is that
4 there may be some issues concerning authentication of
5 documents or chain of custody issues which have not yet
6 come up but which may down the road come up.

7 THE COURT: Okay. Well that's one of the items
8 on your proposed scheduling order and I found that
9 curious. I don't know if this is an appropriate time to
10 discuss this. Is the identification -- does witness
11 deposition issue related to the authentication admissions
12 that you're planning to try to resolve or will try to
13 address in requests for admissions reflected further down
14 your proposed scheduling order?

15 MR. GLATTER: Your Honor, Josh Glatter again.

16 We baked that date into the proposed schedule
17 recognizing that that may be one vehicle wherein we tried
18 to satisfy any 901 or 902 requirements in connection with
19 documentary evidence. That said, I don't -- it's not
20 really a discussion we have had with any degree of
21 specifics with defense counsel, other than in connection
22 with some depositions getting some stipulations on
23 business records exception. But certainly as a general
24 matter, to the extent that defendant will be interested
25 in sitting down and seeing if we can arrive at a mutually

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1 acceptable stipulation with respect to authenticity of
2 documents, at least from a facial 901 perspective, that's
3 certainly something that we would be happy to entertain
4 and, you know, avoid the time and delay and always a
5 logistical headaches in connection with formal RFAs. But
6 I don't know that we've really reached the point yet that
7 we've had those kind of discussions that we're talking
8 about specific documents. So just from a scheduling
9 stand point, we thought it wiser to include a lock in
10 date for that, so that it retained -- it remained an
11 option.

12 And I should also add that RFAs may extend
13 beyond simply authenticity issues but that's certainly
14 one means that I have experienced in the past of
15 resolving them, so we've incorporated it. Does that
16 answer your question? I am not sure that that's --

17 THE COURT: My concern is that if you get to
18 the stage of responding to a summary judgment motion, I
19 don't want the parties to be entering a satellite
20 discovery dispute over authenticity of documents.

21 MR. GLATTER: Well from -- I guess from my -- I
22 mean, not having an encyclopedic knowledge of the kind of
23 evidentiary standards and Rule 56 relief, but my
24 recollection is that so long as the material is in a form
25 that could be admissible at trial, then one need not

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1 necessarily per se satisfy a hearsay exemption or an
2 authenticity issue at that time. So I don't know that
3 the prospect of a Rule 56 motion on potential grounds
4 that might implicate authenticity concerns necessarily
5 mandates that a satellite discovery dispute be played out
6 to its fullest extent, you know, prior to resolution of
7 the motion.

8 Typically, even under Rule 901, authenticity is
9 ultimately an issue for the trier of fact as to what
10 weight it wants to give, so long as one has satisfied the
11 threshold prima facie determination. So that's sort of
12 my perspective on it sitting here now but you know,
13 Mr. Friedman may have a different perspective on that.

14 MR. FRIEDMAN: For once I can't say that I do.
15 I am not sure how much of that I followed but let me just
16 say, your Honor, that with respect to depositions that
17 might be necessary once we received affidavits in
18 response to a summary judgment motion, let me just make
19 this a little more concrete, your Honor.

20 THE COURT: Yes.

21 MR. FRIEDMAN: It's not merely an authenticity
22 issue, although I expect there will be authenticity
23 issues. For example, plaintiffs are relying on a lot of
24 documents that supposedly were seized by the Israeli
25 military and we're not really sure, and posted on the

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1 internet. We don't -- we're not really sure where those
2 documents came from.

3 But more substantively, going back to this list
4 of people who we might need to depose if they're
5 identified as trial witnesses, as I've discussed with Mr.
6 Glatter and with Mr. Osen, many of the more important
7 people on that list or at least more important to me, are
8 former Israeli government and intelligence officials who
9 I assume would be proffered, if at all, on matters much
10 more substantive than authenticity of documents.

11 In that event, if in response to a defense
12 summary judgment motion we see declarations from these
13 folks talking about things other than the authenticity of
14 documents, obviously deposing them pursuant to Rule 56(f)
15 could be quite central. But time will tell as to what we
16 will see in opposition to the summary judgment motion and
17 what trial witnesses we'll see having been identified. I
18 for one am glad that the parties were able to reach an
19 agreement on this, so that we would not need to have
20 depositions of people whose testimony we wouldn't be
21 seeing either in written or -- in written form or at a
22 trial.

23 THE COURT: Well, Rule 56(f) is ordinarily
24 relied upon by a party opposing a motion for summary
25 judgment. So procedurally, I don't know if you would be

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1 in a position to argue otherwise.

2 MR. FRIEDMAN: Well, we'll come to that but I
3 think with us having a written agreement between the
4 parties that if people are proffered as witnesses, we get
5 to depose them, that the plaintiffs -- I don't know if
6 they would even argue that we are not entitled to depose
7 them when they're offered on paper. But we'll see.

8 MR. GLATTER: I agree with that; we'll see.

9 THE COURT: Okay.

10 MR. GLATTER: Your Honor?

11 THE COURT: Maybe once we get closer to that
12 point, we can discuss the procedures to try to facilitate
13 the taking of the depositions.

14 MR. FRIEDMAN: Right.

15 THE COURT: Because I --

16 MR. FRIEDMAN: And I also think it will be a
17 function, your Honor, of what issues are teed up on
18 summary judgment.

19 THE COURT: Right. Obviously. And -- go
20 ahead.

21 MR. GLATTER: Your Honor, actually one -- I
22 apologize for asking, I just don't -- I am in a
23 conference room right now, I don't know whether or not
24 Judge Trager has his own chambers rules that requires the
25 parties that are filing a motion such as a summary

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1 judgment motion to essentially preview it in connection
2 with a letter. It's not a uniform rule for all judges.

3 THE COURT: He does require it and that's what
4 initially triggered in part my review of the status of
5 these cases.

6 MR. FRIEDMAN: I think, your Honor, after we
7 finish expert discovery, I for one will know a lot more
8 about where we're heading thereafter, once I see what the
9 plaintiffs are offering by way of expert testimony.

10 MR. GLATTER: I agree that that would probably
11 be my position if I were in Mr. Friedman's place. And
12 the reason I asked about Judge Trager's chambers rule is
13 that that process may in and of itself help, you know,
14 flush out any logistical issues that come up in the
15 ultimate briefing that's -- our schedule obviously
16 contemplates a briefing schedule but Judge Trager may
17 have to modify it based on his own preferences and the
18 process that leads up to it may help lay out any
19 logistical -- address any logistical hurdles be it
20 depositions of witnesses by affidavits or similar items.

21 THE COURT: No, fair enough. I think once the
22 defendants file a request for a premotion conference,
23 that should alert all of the plaintiffs as to the issues
24 that you would have to address and perhaps at that
25 juncture, you could give notice of your intention to

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1 submit affidavits from any of these witnesses on the
2 26(a) disclosures.

3 MR. GLATTER: Absolutely or perhaps when the
4 discovery is done, the defendant will decide it simply
5 did not want to proceed with summary judgment but I guess
6 we'll see. Hope spring's eternal.

7 THE COURT: Okay. Well I will raise another
8 hope spring's eternal issue at the end of this
9 conference.

10 MR. GLATTER: Okay, Judge. Your Honor, the
11 last item on the August 31 carve outs are additional
12 documents are being produced by Credit Lyonnais or
13 information provided in response to my letter to
14 Mr. Friedman of August 17.

15 My colleague, Mr. Goldman, what that references
16 is a very long epic letter that we sent to defense
17 counsel trying to wrap up a number of potentially open
18 items with respect to prior discovery requests that were
19 outstanding and getting clarification as to whether or
20 not we had really completed any production or not. And
21 my colleague, Mr. Goldman, led those discussions and to
22 the extent I leave anything out, he can correct my
23 comments.

24 But my sense is that we more or less, at least
25 in terms of affirmative production were satisfied with

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1 the resolution of that discussion. There may be a few
2 open items we're waiting for confirmation on in the
3 laundry list that was sent over.

4 I know that one over arching issue for us that
5 will probably have to internally and then with defendant
6 come up with a process to address, are not the issue of
7 future documents to be produced but documents that once
8 existed but for one reason or another, no longer exist
9 because that has certain potentially important
10 implications both substantively and evidentiarily
11 speaking.

12 And in terms of how we kind of skin the cat in
13 that regard, you know, whether it's potentially through
14 some sort of 30(b)(6) deposition that might address
15 document destruction policies, through some forensic
16 examination of arguably fragmentary material, it's hard
17 to say sitting here right now, I don't want to be accused
18 of suggesting anything that we haven't really had a
19 chance to hash out with defense counsel yet. But it is
20 as a general matter, an open item for us. It's one
21 that's important because as you know, your Honor, from
22 prior conferences that we've had, emails for certain very
23 important witnesses are no longer available because --
24 once those witnesses stop working at (inaudible) --

25 THE COURT: Right.

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1 MR. GLATTER: And then moved on to Credit
2 Agricole (ph.) and so there are both sort of legal and
3 frankly, strategic judgments that we have to make in
4 terms of deciding where we go in light of that reality.

5 THE COURT: I guess it's premature to be
6 discussing this issue but I do want to discuss this issue
7 as soon as we can. What's your estimate on the last date
8 that document production will be completed?

9 MR. FRIEDMAN: Well, your Honor, I think
10 there's one category in Mr. Glatter's August 17 letter
11 that we still need to respond to and I expect to do so
12 shortly. There are no other documents that I am aware of
13 that are pending except with respect to the account back
14 up which we discussed under item B.

15 But I should know within a week or so whether
16 there are any other additional documents to produce in
17 response to this one open category from Mr. Glatter's
18 letter. So that should be wrapped up very quickly.

19 MR. GLATTER: And, your Honor, with respect to
20 the documents that once existed but no longer exist, it
21 may be the case, I obviously won't swear to it but that
22 the depositions that are proceeding for the two witnesses
23 in Paris will at least be one additional factor in
24 helping to clarify what sort of discovery or other
25 process needs to be engaged in with respect to that

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1 universe of now no longer available material.

2 MR. FRIEDMAN: Yes.

3 MR. GLATTER: We will obviously see depending
4 on how the testimony shakes out in France.

5 MR. FRIEDMAN: Your Honor, I don't want to
6 belabor the point but I will remind Mr. Glatter that
7 among the first two depositions that they took were of
8 two 30(b)(6) witnesses who addressed document retention
9 policies and now the plaintiffs are asking us well for
10 those documents that you're not producing, tell us why
11 you're not producing them. Either they did exist or they
12 didn't exist and if they did exist, what happened to
13 them. And that's a very difficult question for any human
14 being to answer in most cases.

15 The 30(b)(6) witness about email retention
16 testified a couple of years ago about why certain emails
17 are no available pursuant to the company's policy but
18 you'll understand that when my client is asked okay, you
19 say that there are no documents responsive to this
20 category, why is that and did any such documents ever
21 exist, they kind of scratch their head and say well if I
22 don't have the documents, how do I know whether they
23 existed or they didn't exist? And that's true in most
24 cases.

25 But if Mr. Glatter has more he wants to pursue

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1 on that, our meet and confers are usually very fruitful.

2 MR. GLATTER: That's correct, your Honor, and I
3 should also add Mr. Friedman is correct that early in the
4 litigation, I believe two 30(b)(6) depositions were
5 conducted concerning document retention policies and
6 destruction policies. That, however, occurred long
7 before frankly the bulk of document production had even
8 been underway and certainly before many, many other more
9 specific document requests and related questions have
10 been issued.

11 And in terms of -- I'll just clarify, we're not
12 talking in abstraction -- we know because of certain
13 materials that were produced from the defendant's former
14 New York branch that there appear to have been emails
15 that were generated by certain employees in France
16 because their New York counterparts actually had their
17 own responses that came from France. Whether or not
18 additional written or email communications on the French
19 side existed between say for example, Mr. Black and
20 Mr. Marsaud (ph.) that weren't copied to New York but
21 nevertheless existed at some time that might have fleshed
22 it out, our understanding is that if they did, they can't
23 be produced at this time and you know, it's a little bit
24 of a tricky issue but ultimately as I said, you know,
25 when I began this conversation that does have some

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1 potentially important ramifications from an evidentiary
2 stand point and that's something that once we're
3 completed with our depositions in France, we will sit
4 down and after we've internally conferred, come back to
5 defendants and try to see if we can establish something
6 reasonable to resolve it one way or the other.

7 THE COURT: Okay. Well I will wait to see if
8 you can. Clearly, I mean I don't -- I agree with
9 Mr. Glatter that depositions taken before much of the
10 discovery will necessarily be sufficient to address the
11 concerns he raises but we'll see what arises and what you
12 can't resolve. Okay?

13 MR. GLATTER: That covers all of the items on
14 the August 31 carve outs, your Honor.

15 THE COURT: Okay. Maybe what makes sense is we
16 should either have a conference at the conclusion of fact
17 -- I mean at the conclusion of expert discovery or
18 perhaps even just after the exchange of expert reports,
19 and also at some point have some sort of a deadline for
20 the parties to address any issues that may arise from the
21 production of documents; a final deadline so we don't
22 have any of these issues hanging.

23 MR. FRIEDMAN: That's fine, your Honor. The
24 last expert reports are due to be exchanged under this
25 proposal on April 13.

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1 THE COURT: Okay.

2 MR. OSEN: I would -- this is Gary Osen,
3 your Honor.

4 I would suggest at the Court's convenience that
5 perhaps we schedule a holding date some time in January
6 after these depositions have concluded in France and
7 after at least the initial exchange of reports have
8 occurred. By then we will presumably have conferred with
9 Mr. Friedman on a number of the outstanding issues and
10 there will either be a resolution and we can cancel such
11 a conference and reschedule it for -- that will sort of
12 give us a date to target for any outstanding (inaudible).

13 MR. FRIEDMAN: That's fine with me, your Honor.
14 Because of a trial calendar, I would ask that it be in
15 late January.

16 THE COURT: Okay. Well that's fine. January
17 29 at 10 o'clock?

18 MR. GLATTER: Right now, your Honor, I think
19 that's okay for us, at least speaking for th Strauss
20 plaintiffs.

21 MR. ISRAEL: And that's fine with Wolf, too,
22 your Honor.

23 MR. FRIEDMAN: That's fine with me, your Honor.

24 THE COURT: Okay. And as you know, as long as
25 I have sufficient notice, I am happy to change the date

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1 and time. All right.

2 Then I will approve the proposed schedule up
3 through the deadline for completion of all discovery and
4 maybe some time after the conclusion of expert reports
5 we'll -- I want, if you decide that you need to file
6 Daubert motions to inquire of the parties whether or not
7 those motions should be filed before the dispositive
8 motions.

9 But in any event, the deadline for filing of
10 dispositive motions will be converted into a deadline for
11 filing requests for a premotion conference. So, we'll --
12 we can address that a little further on after we see what
13 -- after the parties have made their preliminary exchange
14 of the expert reports. So, okay.

15 Is there anything else that we need to discuss
16 in the Strauss and Wolf cases?

17 MR. GLATTER: Speaking for the Strauss
18 plaintiffs, nothing further, your Honor. Only one
19 housekeeping question, the January 29, 2010 conference,
20 that's going to be at 10 a.m., Judge?

21 THE COURT: Yes.

22 MR. GLATTER: And is that going to be in person
23 or by phone?

24 THE COURT: Whatever is convenient for you. I
25 am happy to conduct it by telephone, since it will

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1 essentially be a scheduling conference but if you want to
2 come in person, that's fine too.

3 MR. GLATTER: I'm always happy to make a trip
4 to Brooklyn, your Honor, but I defer to my colleagues on
5 the call.

6 THE COURT: Go ahead.

7 MR. GLATTER: Mr. Friedman, do you have a
8 preference or --

9 MR. FRIEDMAN: Whatever works.

10 THE COURT: Okay. I will put my calendar as
11 being by telephone and if you want to come in person,
12 you're more than welcome to. Just let us know ahead of
13 time.

14 MR. GLATTER: Thank you, Judge.

15 THE COURT: There is one last procedural issue
16 that I want to ask about these cases and that is a
17 consolidation of the two Credit Lyonnais cases and the
18 two NatWest cases. I don't know if the parties have
19 talked about it. There has been no formal consolidation
20 order entered and certainly at least for purposes of the
21 summary judgment motions, I would assume that there's no
22 reason not to have one motion be filed with respect to
23 the two Credit Lyonnais cases and one motion as to the
24 NatWest cases.

25 MR. FRIEDMAN: That's fine with the two

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1 defendants, your Honor. Obviously, the Credit Lyonnais
2 and NatWest cases can't be consolidated across because of
3 the very different issues and the different pace at which
4 they're proceeding. But I have no -- I would expect that
5 summary judgment motion practice in Strauss and Wolf
6 would come together and same in Weiss and Applebaum.

7 MR. GLATTER: Your Honor, speaking -- Josh
8 Glatter again -- for the Strauss plaintiffs, I think that
9 that's the case as well. The only thing that I would
10 note just from a docket management stand point is that
11 long ago when the cases were -- by the cases I am
12 referring to the Strauss and Wolf case, were in a
13 slightly staggered pattern and there was a dispute
14 between the two plaintiffs constituencies that came up in
15 the context of a renewed motion under bank secrecy by the
16 defendants with a later filed case. And there were some
17 issues between the plaintiff's parties in terms of how
18 that was going to play out. And Judge Matsumoto
19 ultimately entered an order that at least de facto
20 created some degree of administrative consolidation
21 between the cases and once we resolved our disputes
22 between our two camps, things have been proceeding pretty
23 nicely ever since.

24 So I don't know unless again from the Court's
25 docket stand point that we need to do any more formal

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1 consolidation order beyond the schematic that's been in
2 place now once that latter bank secrecy motion was
3 resolved by Judge Matsumoto. But to the extent that for
4 the Court's statistics, it's helpful to have that in
5 place. I don't think that poses an issue for us.

6 MR. ISRAEL: And not for us either, your Honor,
7 speaking for the Wolf plaintiffs. There's been a few
8 small issues for each case that have come up here and
9 there but certainly on the big issues the drafting of
10 motions and then heading towards trial, that would be
11 fine.

12 THE COURT: Okay.

13 MR. GLATTER: It's not a situation where we
14 have five related cases with things only being filed in
15 one. It's essentially per case, only two captioned
16 cases. So it hasn't really been a problem for us for
17 both letters and filings to just simply add the second
18 caption and agree to sign off on the pleadings but --

19 MR. OSEN: Gary Osen, your Honor.

20 Put, I think succinctly, I think Judge Trager
21 (inaudible) one opposition brief from both plaintiff
22 group.

23 THE COURT: All right. I think there would be
24 some usefulness in having some clarity and I did pull
25 Judge MATsumoto's -- I guess there was a stipulation on

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1 coordinated discovery that had been submitted to her.
2 But these cases are wrongly noted on the docket sheet,
3 and all four cases are noted as being consolidated.
4 Obviously, they are not but that was the only designation
5 we could provide, so that we would all have the ease of
6 being able to file submissions in the main case, the
7 Weiss case, and have them spread to all of the other
8 cases. And I don't really care one way or the other but
9 I will just note on the docket sheet that when -- that
10 the parties agree that the two NatWest cases will be --
11 any motions filed in the two NatWest cases for summary
12 judgment will be addressed in one motion addressing both
13 cases. And the same for the NatWest cases. Okay.

14 MR. GLATTER: That's fine, your Honor.

15 THE COURT: Okay. Maybe what makes sense with
16 respect to the NatWest case is to discuss those cases in
17 the January conference or are there issues that we need
18 to discuss today that might help?

19 MR. GLATTER: Speaking for the Weiss
20 plaintiffs, your Honor, no, not today and we do agree
21 that just setting it down on January 29 makes a good deal
22 of sense.

23 MR. ISRAEL: Your Honor, for the Applebaum
24 plaintiffs, Joel Israel, I would agree. I think we will
25 be over the next month, month and a half, really in a

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1 good position by then to give a good sense of things.

2 MR. FRIEDMAN: I would agree with that, your
3 Honor.

4 THE COURT: Okay. Then I will wait to receive
5 a proposed revised scheduling order before that
6 conference. And will address any remaining issues,
7 procedural issues that need to be addressed at the
8 January 29 conference in those two cases.

9 MR. FRIEDMAN: Thank you, your Honor.

10 THE COURT: Okay.

11 MR. GLATTER: Thank you, your Honor.

12 MR. ISRAEL: Thank you, your Honor.

13 THE COURT: Bye.

14 (Matter concluded)

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C E R T I F I C A T E

I, ROSALIE LOMBARDI, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 9th day of December , 2009.


Rosalie Lombardi
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